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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 In re FERRERO LITIGATION

CASE NO. 11-CV-205 H (CAB)

12 **ORDER DENYING MOTION**
13 **TO FILE UNDER SEAL**
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15 On August 1, 2011, Plaintiffs filed an *ex parte* motion for an order allowing them to file
16 documents under seal. (Doc. No. 52.) Plaintiffs seek to seal over 190 pages of documents,
17 including the unredacted version of the Memorandum in Support of Plaintiffs' Motion for
18 Class Certification and Exhibits 1, 2, 3, 4, 5, 9, 10, 11, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22,
19 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, and 34 to the Declaration of Gregory S. Weston in
20 Support of Class Certification. For the following reasons, the Court DENIES the motion to
21 seal.

22 "Historically, courts have recognized a 'general right to inspect and copy public records
23 and documents, including judicial records and documents.'" Kamakana v. City & Cnty of
24 Honolulu, 447 F.3d 1172, 1178 (9th Cir. 2006) (quoting Nixon v. Warner Commc'ns., Inc.,
25 435 U.S. 589, 597 & n.7 (1978)). Except for documents that are traditionally kept secret, there
26 is "a strong presumption in favor of access to court records." Foltz v. State Farm Mut. Auto.
27 Ins. Co., 331 F.3d 1122, 1135 (9th Cir. 2003); see also Kamakana, 447 F.3d at 1178-79. "A
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1 party seeking to seal a judicial record then bears the burden of overcoming this strong
 2 presumption by meeting the compelling reasons standard. That is, the party must articulate
 3 compelling reasons supported by specific factual findings, ... that outweigh the general history
 4 of access and the public policies favoring disclosure, such as the public interest in
 5 understanding the judicial process.” Kamakana, 447 F.3d at 1178-79 (citations and quotation
 6 marks omitted). The presumed right to access to court proceedings and documents can be
 7 overcome “only by an overriding right or interest ‘based on findings that closure is essential
 8 to preserve higher values and is narrowly tailored to serve that interest.’” Oregonian Publ’g
 9 Co. v. United States Dist. Court, 920 F.2d 1462, 1465 (9th Cir.1990) (quoting Press-Enterprise
 10 Co. v. Superior Court, 446 U.S. 501, 510 (1985)).

11 “Under the compelling reasons standard, a district court must weigh relevant factors,
 12 base its decision on a compelling reason, and articulate the factual basis for its ruling, without
 13 relying on hypothesis or conjecture.” Pintos v. Pac. Creditors Ass’n, 605 F.3d 665, 659 (9th
 14 Cir. 2010) (quotations omitted). “‘Relevant factors’ include the ‘public interest in
 15 understanding the judicial process and whether disclosure of the material could result in
 16 improper use of the material for scandalous or libelous purposes or infringement upon trade
 17 secrets.’” Pintos, 605 F.3d at 659 n.6 (citing Hagestad v. Tragesser, 49 F.3d 1430, 1434 (9th
 18 Cir. 1995)); see also Kamakana, 447 F.3d at 1179 (“In general, ‘compelling reasons’ sufficient
 19 to outweigh the public's interest in disclosure and justify sealing court records exist when such
 20 ‘court files might have become a vehicle for improper purposes,’ such as the use of records to
 21 gratify private spite, promote public scandal, circulate libelous statements, or release trade
 22 secrets.”)

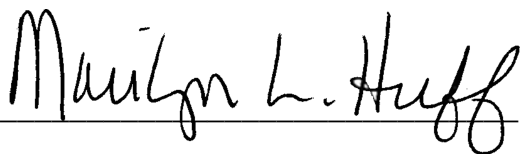
23 Plaintiffs argue that the documents in question were subject to a Court’s protective
 24 Order and contain information designated as confidential by Defendant and /or third parties.
 25 (Doc. No. 52. at 2.) Plaintiffs argue that because the parties agreed to file such information
 26 under seal, good cause exists for the Court to approve Plaintiffs’ request. The Court disagrees.
 27 Under Rule 26(c), “[t]he court may, for good cause, issue an order to protect a party . . . from
 28 annoyance, embarrassment, oppression or undue burden or expense . . .” Fed. R. Civ. P.

1 26(c). “A party asserting good cause bears the burden, for each particular document it seeks
2 to protect, of showing that specific prejudice or harm will result if no protective order is
3 granted.” Foltz, 331 F.3d at 1130 (internal quotation marks, and citation omitted). “[B]road
4 allegations of harm, unsubstantiated by specific examples or articulated reasoning, do not
5 satisfy the Rule 26(c) test.” Beckman Indus., Inc. v. Int’l Ins. Co., 966 F.2d 470, 476 (9th Cir.
6 1992). To the extent Plaintiffs argue that the protective order itself assures that Rule 26(c)
7 good cause standard is met in this case, the argument is rejected. “[A] party seeking the
8 protection of the court via a blanket protective order typically does not make a ‘good cause’
9 showing required by Rule 26(c) with respect to any particular document.” Foltz, 331 F.3d at
10 1133.

11 Moreover, Plaintiffs’ one-page motion to seal does not identify each exhibit and explain
12 why any particular statements or portions of the exhibits that may warrant sealing. Even if
13 good cause existed to seal a portion of the exhibit, sealing the entire exhibit may not be
14 warranted. Should either party in the future request the sealing of any documents, they must
15 designate specific portions based on the appropriate showing. Accordingly, the Court DENIES
16 Plaintiff’s motion to file documents in support of their Motion for Class Certification under
17 seal.

18 **IT IS SO ORDERED.**

19 DATED: August 3, 2011

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21 MARILYN L. HUFF, District Judge
22 UNITED STATES DISTRICT COURT
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